

REMARKS

Reconsideration is requested.

Claims 39, 41, 42, 44-47, 50-54 and 58 have been additionally canceled above, without prejudice. Claims 68 and 69 have been withdrawn from consideration.

Rejoinder and allowance of the withdrawn method claims with the claims under active consideration are requested. Claims 38, 43, 48, 49, 55, 56, 57, 59-62, 65, 68 and 69 are pending. Support for the amendments may be found throughout the specification, such as on page 13, lines 5-11 and in the specifically described compounds of the application, including the claims. No new matter has been added. The claims have been amended, without prejudice.

A response to the Request of March 4, 2009 is requested.

The provisional obviousness-type double patenting rejection of claims 38, 39, 61 and 62 over claims 69, 70, 96 and 97 of U.S. patent application no. 10/520,079 is obviated by the concurrently-filed Terminal Disclaimer. Withdrawal of the provisional rejection is requested.

The obviousness-type double patenting rejection of claim 38 over claim 1 of U.S. Patent No. 7,385,082 is obviated by the concurrently-filed Terminal Disclaimer. Withdrawal of the rejection is requested.

The Section 112, first paragraph "written description", rejection of claims 38, 39, 41-62 and 65, and the Section 112, second paragraph, rejection of claims 38, 39, 41-62 and 65, are obviated by the above amendments. Support for the amended recitation

may be found, for example, on page 27, lines 10-24 of the specification. No new matter has been added. Withdrawal of the rejections is requested.

To the extent not obviated by the above amendments, the Section 103 rejection of claims 38, 42, 44, 46-48, 59 and 65 over Vanstone (U.S. Patent No. 4,190,671) in view of King (Medical Chemistry: Principles of Practice, 1994, Chapter 14), is traversed. Reconsideration and withdrawal of the rejection are requested in view of the above and the following distinguishing comments.

The Examiner is understood to rely on the compound of Example 12 of the cited patent (i.e., 4-methyl-4'-carboxymethoxy-chalcone) as a basis for the rejection. The Examiner has identified the following structures from compounds of Formula (I) of the unamended claims in the compound of Example 12 of the cited patent:

X_1 = carboxymethoxy (G_1 = oxygen; R_1 = alkyl substituted with group 1 where group 1 is $COOR_6$, R_6 is hydrogen, and alkyl is $-CH_2-$);

X_2 = hydrogen

X_3 = hydrogen (= R_3)

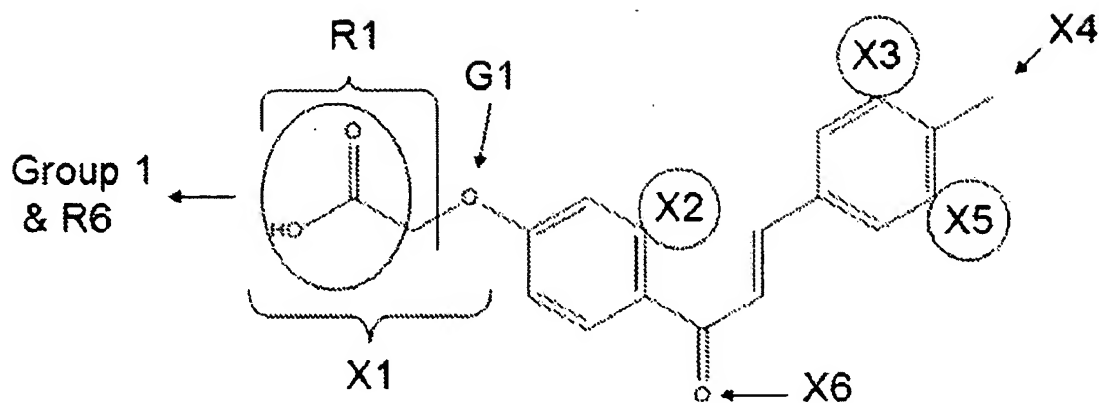
X_4 = methyl (= R_4)

X_5 = hydrogen (= R_5);

X_6 = oxygen.¹

More specifically, the following is a reproductions of the helpful schematic identification provided by the Examiner:

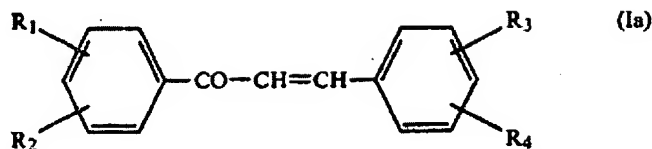
¹ See page 6 of the Office Action dated February 26, 2009.



The Examiner has relied on the secondary reference to allegedly teach an equivalency of $-S-$ and $-O-$ as the Examiner believes, for example, that claim 38 required one of G1, G2, G3, G4 or G5 to be $-S-$.

The claims have been revised, without prejudice, to further distinguish the claimed invention over the cited art. Specifically, R1 of the revised claims is an unsubstituted C_{1-7} alkyl and X_4 is G1-R4 where G1 is $-O-$ or $-S-$ and R4 is C_{1-7} alkyl containing a substituent $-COOR_6$ wherein R_6 is hydrogen or C_{1-7} alkyl.

The cited art fails to teach or suggest the presently claimed invention. R_1 of the following general formula (Ia) of the cited patent, for example, is, broadly, a hydroxyl, carboxylic acid or suphonic acid group or a caboxyalkoxy or sulphoalkoxy radical:



² As between R₁ and R₂ of

formula (Ia) of the cited patent, R₂ must correspond to X₂ of the compounds of the claimed formula (I) as R₂ and not R₁ of compounds of the cited patent may be hydrogen. R₁ of the compounds of formula (Ia) of the cited patent however do not include or suggest the substituents of X₁ of the compounds of the presently claimed invention (i.e., a halogen or a -R₁ group or a group corresponding to the following formula : -G₁-R₁, where G₁ is sulfur or oxygen). Moreover, R₁ of the compounds claimed in the cited patent is a carboxyalkoxy radical and in 19 of the 24 examples of compounds of the cited patent the R₁ substituent is carboxymethoxy.

The cited art fails to suggest the presently claimed invention. The cited art fails to teach or suggest a method for making the claimed invention. The claimed invention would not have been obvious in view of the cited art. Withdrawal of the Section 103 rejection is requested.

The claims are submitted to be in condition for allowance and a Notice to that effect is requested. The Examiner is requested to contact the undersigned in the event anything further is required in this regard.

² See column 1, lines 20-24 of USP 4,190,671.

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Respectfully submitted,

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